

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 _____
4 MICHAEL MCCALLION,
5 Plaintiff,
6 v. Case No:
7 C.O. MATTHEW MARRA, 22-CV-00253
8 SGT. JOSEPH COFFEY,
9 C.O. MARCUS HART,
10 C.O. SHAWN BARBARITO,
11 C.O. GORDON GRIFFITH,
12 C.O. WEIDNER, and
13 C.O. KREG JACKSON,
14 Defendants.

15 _____
16 DEPOSITION
17 _____

18
19 WITNESS: Matthew Marra
20 DATE: Friday, March 24th, 2023
21 START TIME: 11:02 a.m.
22 END TIME: 12:41 p.m.
23 REMOTE LOCATION: Webex platform
24 REPORTER: Kimberly Costanza, CER-
25 JOB NO.: 15856

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A P P E A R A N C E S

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I N D E X O F T E S T I M O N Y

EXAMINATION OF MATTHEW MARRA:

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By Mr. Sivin

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FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties that the presence of the Referee be waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved until the time of trial;

IT IS FURTHER STIPULATED AND AGREED that this deposition may be utilized for all purposes as provided by the Federal Rules of Civil Procedure;

AND FURTHER STIPULATED AND AGREED that all rights provided to all parties by the Federal Rules of Civil Procedure shall not be deemed waived and the appropriate sections of the Federal Rules of Civil Procedure shall be controlling with respect thereto.

1 FEDERAL REMOTE STIPULATIONS

2

3 IT IS HEREBY STIPULATED, by and between the
4 attorneys of record for all parties to the above-
5 entitled action, that:

6 Pursuant to Rule 30(b)(4) of the Federal Rules
7 of Civil Procedure, this deposition will be conducted by
8 remote videoconference with the oath being administered
9 remotely and a court reporter creating an accurate
10 written record; that, if necessary, the parties agree
11 that each witness can be identified with picture
12 identification;

13 No attorney, nor any party or witness, shall
14 capture any still photographs, nor record, by video or
15 audio, any part of these deposition proceedings;

16 Each attorney agrees to instruct their witness
17 that there is to be no communication with anyone outside
18 of the identified and participating group, by chat,
19 text, email, or other means during the deposition;

20 There shall be no other person in the room
21 with the witness during their deposition;

22 Any phone or electronic device in the room
23 with a witness shall be identified and not read,
24 referred to, or otherwise used during the witness'
25 deposition, unless agreed to by all counsel on record.

1 P R O C E E D I N G S

2 THE REPORTER: Okay. We are now on the
3 record. Today's date is March 24th, 2023, and the time
4 is approximately 11:02 a.m. Eastern Standard Time.

5 My name is Kimberly Costanza, and I'm the
6 officer designated by Remote Legal, 381 Park Avenue
7 South, New York, New York, to take the record of this
8 proceeding.

9 This is the deposition of Matthew -- I'm
10 sorry -- Matthew Marra, taken in the matter of McCallion
11 versus Matthew Marra, et al., Case Number 22-CV-00253,
12 filed in the United States District Court, Northern
13 District of New York.

14 This deposition is being taken remotely
15 on behalf of the plaintiff and is being conducted
16 pursuant to the procedural rules and laws governing this
17 matter. As such, all parties agree to this means of
18 capturing the record, which may include recording by
19 audio, audiovisual, or stenographic means, as if it were
20 done by traditional in-person means.

21 Further, all parties agree that the
22 deposition officer or person administering the oath may
23 be authorized to administer the oath under the rules of
24 the state where they reside.

25 Do all parties so stipulate?

1 MR. SIVIN: Plaintiff stipulates.

2 MR. DORANDO: I stipulate on behalf of my
3 client.

4 THE REPORTER: Thank you. And would all
5 counsel please identify themselves for the record,
6 starting with the noticing.

7 MR. SIVIN: Edward Sivin for the
8 plaintiff.

9 MR. DORANDO: Nicholas Dorando for the
10 Office of the Attorney General for the defendant.

11 THE REPORTER: Thank you. And I will now
12 --

13 MR. MARRA: This is CO M. Marra --

14 THE REPORTER: Yes.

15 MR. MARRA: -- Department of Corrections.

16 THE REPORTER: Thank you. I will now
17 swear in the witness.

18 Will the witness please state and spell
19 your name for the record.

20 MR. MARRA: Oh. CO M. Marra.

21 THE REPORTER: Thank you. Will you
22 please spell your last name for the record.

23 MR. MARRA: M-A-R-R-A.

24 THE REPORTER: Thank you. And will you
25 please raise your right hand.

1 Do you swear or affirm that the testimony
2 you shall give today in this proceeding will be the
3 truth, the whole truth, and nothing but the truth?

4 MR. MARRA: I do.

5 WHEREUPON,

6 M A T T H E W M A R R A

7 having been called as a witness, being duly sworn by the
8 notary public present, testified as follows:

9 THE REPORTER: Thank you. Counsel, you
10 may begin.

11 MR. SIVIN: Thank you.

12 Good morning, Officer.

13 THE WITNESS: Good morning.

14 EXAMINATION

15 BY MR. SIVIN:

16 Q My name is Edward Sivin. I represent the
17 plaintiff, Michael McCallion. I'm going to be asking
18 you some questions relating to an incident -- an initial
19 incident that occurred on October 28th of 2020 at
20 Gouverneur Correctional Facility. If for any reason,
21 Your Honor understand my question, or a question is not
22 clear to you, don't answer the question, and instead ask
23 me to repeat it or rephrase it, and I will do so, okay?

24 A Okay.

25 Q Also, please make sure that all of your

1 responses are verbal, because the stenographer can't
2 take down hand gestures or head gestures, okay?

3 A Okay.

4 Q And my final request is, please wait until I
5 completely finish my question before you begin your
6 answer, even if you know what I'm about to ask, because
7 this stenographer can't take down both of us speaking at
8 the same time, okay?

9 A Okay.

10 Q All right. Are you currently a correction
11 officer with the Department of Corrections and Community
12 Supervision?

13 A Yes.

14 Q When did you graduate the academy?

15 A I grad -- I went into the academy January
16 25th, 2016.

17 Q And when did you graduate?

18 A The academy is eight weeks long, so I don't
19 have an exact date for you.

20 Q Okay. I'd like you to take me through your
21 assignments from when you graduated the academy to the
22 present and give me the general time frames.

23 A Do you want the jails that I was --

24 Q Yes.

25 A Okay. So after the academy, I was placed in

1 Washington Correctional Facility for approximately two
2 months. Then I went to Five Points Correctional
3 Facility for about six months. And then I went to
4 Albion Correctional Facility for about a year and a
5 half, and then I transferred to Gouverneur Correctional.

6 Q When did you first start at Gouverneur?

7 A About three years -- or four years ago.

8 Q Your first name is Michael?

9 A Matt -- no, it's Matthew.

10 Q I'm sorry. Matthew. And do you have a middle
11 name?

12 A Philip (phonetic).

13 Q How tall are you?

14 A About five-two.

15 Q And back in October of 2020, approximately how
16 much did you weigh?

17 A About 130 pounds.

18 Q Now were you working at Gouverneur on October
19 28th, 2020?

20 A Yes.

21 Q Did you have a regular bid at that time?

22 A I did. I --

23 Q What was --

24 A Go ahead.

25 Q What was your regular bid?

1 A I was on C1 dorm.

2 Q What were your duties at C1 dorm?

3 A I was the dorm officer on --

4 Q What is a dorm officer?

5 A We -- we regulate how the dorms run. When
6 they go out to chow program, we let them out. We do
7 security rounds on the dorm, in the bathrooms to
8 maintain safety and security within the dorm.

9 Q Did you have a regular shift or tour that you
10 worked?

11 A Three to 11.Three.

12 Q Is that 3 p.m. to 11 p.m.?

13 A Sorry. Yep, 3 p.m. to 11 p.m.

14 Q How long had you been a dorm officer at C1
15 dorm as of October 28th, 2020?

16 A I'd -- at least a year. I'm not positive.

17 Q Okay. Was that your regular bid for that time
18 period?

19 A No, I didn't get the bid when I first got to
20 Gouverneur. I was -- I didn't -- I got the bid after I
21 was -- had been there for a period of time.

22 Q So how long had you been a dorm officer at C1
23 dorm as of October 28th, 2020?

24 A I don't recall. I don't know if it was a
25 year. It might have been longer.

1 MR. SIVIN: Okay. Your video is very
2 fuzzy now. Is there any way you could clear that up?
3 I'm having trouble seeing you guys.

4 MR. DORANDO: Is it the filter or just --

5 MR. SIVIN: There we go. There we go.
6 Now you're good.

7 MR. DORANDO: Okay.

8 MR. SIVIN: All right. Thanks.

9 BY MR. SIVIN:

10 Q Now on October 28th, 2020, was Michael
11 McCallion residing at the C1 dorm?

12 A He was.

13 Q Did you know him before that day?

14 A No.

15 Q Okay. Do you have any recollection of him
16 prior to October 28th, 2020?

17 A Not -- no. He came into my dorm, I believe, a
18 short period before -- before the incident, obviously,
19 but that's it.

20 Q When you say, "obviously," why do you say
21 that?

22 A Because he -- well, now -- like, the day the
23 incident occurred, that wasn't his first day on the
24 dorm.

25 Q Okay. Can you approximate how long he was on

1 the dorm before October 28th, 2020?

2 A I can't. I don't recall when he got there.

3 Q Yep. Do you have any recollection of him,
4 though, prior to October 28th, 2020?

5 A Other than him being on my dorm for a period
6 of time prior to the incident, no.

7 Q Okay. Had you ever spoken with him before
8 that date?

9 A I don't believe so.

10 Q Had you had any problems with him?

11 A I don't recall, no.

12 Q Had you observed Mr. McCallion have problems
13 with any other officers?

14 A No.

15 Q Did you ever know him to be violent or hear of
16 him being violent?

17 A No.

18 BY MR. DORANDO: Object to form.

19 BY MR. SIVIN:

20 Q What was your shift on October 28th, 2020?

21 A Three to 11.

22 Q And did there come a time when you had some
23 type of an encounter with Mr. McCallion on October 28th,
24 2020?

25 A I did.

1 Q Where did that encounter first take place?

2 A The inmate bathroom.

3 Q Can you describe the inmate bathroom for me?
4 What did it look like?

5 A It's a long, somewhat narrow room that has
6 stalls on one side and sinks on the other.
7 Approximately four stalls on one side, I believe, and
8 somewhere between six and eight, I think, sinks on the
9 other.

10 Q Is it generally rectangular shaped?

11 A Yeah, I would say so.

12 Q Okay. Any shower stalls in there?

13 A The shower stalls are on the other side of the
14 bathroom.

15 Q And what brought you to the bathroom just
16 prior to your encounter with Mr. McCallion?

17 A So while making security rounds on the dorm, I
18 heard screaming, yelling, coming from the inmate
19 bathroom. And that's when I entered the bathroom and
20 can see McCallion standing there.

21 Q Where were you when you first heard the
22 screaming and yelling?

23 A When I first heard it, I was in, actually, in
24 the dorm area. I heard -- I heard the screaming, so I
25 continued my rounds, went into the inmate bathroom to

1 see what was going on, and that's where, again, I saw
2 him.

3 Q Okay. Where in the dorm precisely were you
4 when you heard that screaming?

5 A In where the inmates -- their sleeping area.

6 Q Okay. How many entrances were there to the
7 bathroom?

8 A One.

9 Q Okay. Can you approximate for me how far away
10 from the entrance you were when you first heard that --
11 what you characterized as screaming and yelling?

12 A I don't -- 50 -- 20 to -- honestly, I don't --
13 I don't have an idea of how -- it was probably at least
14 20 feet.

15 Q Okay.

16 A To give you an exact measurement, I don't -- I
17 don't know exactly where I was (indiscernible) 11:14 in
18 --

19 Q Okay.

20 A proximity to the bathroom.

21 Q And when you first heard that screaming and
22 yelling, were you able to see inside the bathroom at
23 that point?

24 A When I first heard it?

25 Q Yeah.

1 A No.

2 Q In other words, from that perspective, if you
3 would look towards the bathroom, could you see inside
4 the bathroom at that point?

5 A From where I was, no.

6 Q Okay. So what did you do immediately after
7 hearing that screaming and yelling? Did you immediately
8 go to the bathroom, or did you do something else?

9 A No, I immediately went to the bathroom right
10 from -- to continue my round to see what was going on.

11 Q Can you describe in more detail what you meant
12 by screaming and yelling?

13 A So I went in -- when I entered the bathroom --

14 Q No, no. I'm sorry. Before you went to the
15 bathroom, when you say you heard the screaming and
16 yelling --

17 A Yep.

18 Q -- can you describe more precisely what you
19 heard that you characterize as screaming and yelling?

20 A Loud, norm --

21 Q I'm sorry?

22 A Do you want me to -- I guess I don't -- can
23 you rephrase your question?

24 Q Okay. Did you hear any words when you heard
25 what you characterized as screaming and yelling?

1 A Well, it wasn't words. It was just the act of
2 screaming. No words were coming out. It was --

3 Q Okay. And did the screaming and yelling
4 appear to be coming from one person, more than one
5 person?

6 A Before I entered the bathroom, I could not
7 tell who was doing it. That's why I made it my way to
8 the bathroom to see who was doing it and what was going
9 on.

10 Q In other words, when you first heard this, you
11 didn't know if the screaming and yelling was coming from
12 one person or more than one person, correct?

13 MR. DORANDO: Objection. You may answer.

14 MR. SIVIN: You can answer.

15 THE WITNESS: I can answer?

16 MR. DORANDO: You can answer?

17 THE WITNESS: Yeah, I don't -- my job at
18 the time was to -- I heard screaming. My job is to --
19 for the safety of the inmates, is to figure out what is
20 going on and to -- to clear up any problems that may be
21 occurring.

22 BY MR. SIVIN:

23 Q But my question is: At that point, you didn't
24 know if the screaming was coming from one person or more
25 than one person, correct?

1 A No. There's no way for me to tell that.

2 Q Okay. Now, did the screaming sound like
3 someone was in distress, someone was angry, someone was
4 screaming out of joy? Any other way you can
5 characterize it?

6 A Distress.

7 Q Okay. What about the screaming that you heard
8 made you conclude that it was a screaming of distress?

9 A Someone -- I guess I don't know how to
10 characterize screaming in a distressful way.

11 Q Well, for instance, if you're at a basketball
12 game and you're rooting for your team and they score a
13 three pointer, you know, at the buzzer, that may result
14 in you screaming.

15 A Yeah, not distress.

16 Q Can you distinguish that type of screaming
17 from the screaming you heard?

18 A No, that wouldn't characterize under distress.

19 MR. DORANDO: I apologize. I misheard
20 the question. Can you restate what the question was?

21 MR. SIVIN: Okay.

22 BY MR. SIVIN:

23 Q Were you able to distinguish that screaming
24 from a distress screaming, to a excited screaming, or
25 any other type of screaming?

1 A Yes, I answered distress.

2 Q Okay. And how long did it take you to arrive
3 at the bathroom after you heard the screaming?

4 A Within seconds.

5 Q Okay. Was there anyone else in your immediate
6 area when you heard the screaming?

7 A Other inmate -- other inmates were around.

8 Q And how, if at all, were they responding to
9 this -- what you characterized as screaming?

10 A They started to clear out of the bathroom.

11 Q Okay. So between the time that you heard the
12 screaming and the time you entered the bathroom, are you
13 indicating that other inmates exited the bathroom?

14 A Yes, because I -- yes.

15 Q Okay. How many inmates did you observe exit
16 the bathroom after you heard the screaming?

17 A I don't recall.

18 Q Was it more than five or fewer than five?

19 A I don't -- I don't recall.

20 Q Okay. Was it more than 10 or fewer than 10?

21 A Probably fewer than 10.

22 Q Okay. Maybe somewhere between 5 and 10.

23 A I would say just less than 10.

24 Q Okay. And what, if anything, did you observe
25 about these inmates who were exiting the bathroom after

1 you heard the screaming?

2 A They -- my attention wasn't on them. It was
3 on McCallion.

4 Q Well, before you entered the bathroom, you
5 didn't see McCallion, correct?

6 A No.

7 Q So these inmates --

8 A You're talking

9 Q -- were coming in --

10 A -- before I entered the bathroom?

11 Q Yes.

12 A Before I entered the bathroom, I just saw them
13 kind of walking out of -- kind of fast walking out of
14 the bathroom, looking behind them, in somewhat surprised
15 look, I guess.

16 Q Were all of them walking in that manner,
17 looking back with that surprised look?

18 A I don't recall.

19 Q Now, the screaming that you say that you
20 heard, do you know whether that screaming came from any
21 of the inmates who you observed walking out of the
22 bathroom?

23 A I guess, definitively, no, I could not say if
24 before I arrived --

25 Q Okay.

1 A -- there that --

2 Q Did you question any of these inmates who were
3 walking out of the bathroom as to what was going on?

4 A No.

5 Q Okay. Now did the screaming continue from the
6 time that you first heard it until the time you entered
7 the bathroom?

8 A It did.

9 Q Okay. Tell me what happened when you arrived
10 at the bathroom.

11 A So when I arrived at the bathroom, I could see
12 McCallion screaming. I proceeded to clear out the
13 bathroom for the other inmates' safety, and so it was
14 just McCallion in the bathroom screaming.

15 Q So when you entered the bathroom, there were
16 other individuals besides McCallion inside there?

17 A There was a few left, probably, yes.

18 Q Can you identify any of them?

19 A No.

20 Q Have you ever tried to identify any of them?

21 A No.

22 Q Okay. Can you identify any of the inmates who
23 you observed exiting the bathroom?

24 A No.

25 Q All right. So what's the first thing you did

1 after entering the bathroom?

2 A The first thing I did was I asked McCallion if
3 he was all right for his safety because I could see that
4 he was in distress. That was the first thing I did.

5 Q Is that before you asked the other inmates to
6 leave the bathroom?

7 A No. I cleared out the inmates, and then I
8 addressed McCallion.

9 Q All right. Tell me how you cleared out the
10 inmates.

11 A I told them to go on a count. 19:25

12 Q And did they respond?

13 A Yes.

14 Q And how did they respond?

15 A By going to their -- their beds within the
16 dorm.

17 Q Did you have any other conversation with any
18 of them?

19 A No, it's a very quick on the count. That's
20 all I say. And they know exactly where to go.

21 Q Okay. Now where in the bathroom was McCallion
22 when you first saw him?

23 A The middle of the bathroom.

24 Q And then what was located in that middle area?

25 A To one side you have stalls, one side you have

1 sinks.

2 Q Okay. And where were the other inmates that
3 you observed when you first entered the bathroom?

4 A I don't recall.

5 Q Okay. And what specifically did you observe
6 McCallion doing when you first saw him?

7 A I observed him screaming, kind of acting
8 erratically, pacing.

9 Q What was he screaming?

10 A Again, he wasn't verbally saying anything --
11 or nothing that I could understand at least.

12 Q Okay. Can you recreate it for us now?

13 MR. DORANDO: Objection.

14 MR. SIVIN: You can answer.

15 MR. DORANDO: Yeah, go ahead.

16 THE WITNESS: It was aah, aah.

17 MR. SIVIN: Okay. Your screen just went
18 blank, so --

19 BY MR. SIVIN:

20 Q All right. So other than the aah, aah, can
21 you identify any other sounds?

22 A What?

23 Q Well, what more than that can you recall for
24 us?

25 A It just was higher pitch. You know, to avoid

1 security coming here, I don't think I really --

2 Q Okay. But without getting your voice louder,
3 other than the aah, can you stipulate any other sounds
4 that you heard from him?

5 A Not that I know of.

6 Q Okay. And you say also that he was acting
7 erratically. What did you see or hear that led you to
8 believe that he was acting erratically?

9 A Well, pacing -- atypical behavior that you
10 don't normally see.

11 Q Well -- okay.

12 A Just pacing. He was sweating quite a bit. It
13 looked like he had glossy eyes. He appeared to be under
14 the influence of an intoxicant of some -- at some point,
15 after I asked him if he was okay, I quickly -- after a
16 quick examination, could see that he may be under the
17 influence.

18 Q Okay. Where was he pacing?

19 A In the middle of the bathroom.

20 Q Back and forth, up and down, or can you be
21 more specific?

22 A Back and forth.

23 Q Okay. So, like, kind of the width of the
24 bathroom?

25 A The -- more the -- the length.

1 Q Okay. And you say he was sweating. When did
2 you first observe him sweating?

3 A When I first asked him if he was okay.

4 Q Okay. Other than pacing, and sweating, and
5 glassy eyes, and screaming, what other observations did
6 you make about him at that time?

7 A That was pretty much it.

8 Q Okay. So what happened after you observed him
9 pacing and screaming?

10 A Well, again, I asked him if he was okay. And
11 then when he saw me, he proceeded to start walking
12 towards me and then lunged at me.

13 Q Now did he respond verbally at all when you
14 asked him if he was okay?

15 A No.

16 Q How far away from him were you when you asked
17 him if he was okay?

18 A Probably five feet or so.

19 Q And then you say he walked towards you and
20 lunged at you?

21 A Correct.

22 Q Now when you say lunged, can you describe
23 physically what he did?

24 A Leaning in my direction with his arms
25 extended.

1 Q Arms extended in what manner?

2 A Like he was going to give me a hug.

3 Q Can you describe the pace at which he walked
4 towards you?

5 A It was, like, a fast, I guess, walk.

6 Q Okay. And did that pace remain the same
7 between the time that you -- he first approached you and
8 the time that you first used any force against him?

9 A Yes, the pace, I believe, stayed the same.

10 Q Okay. So he's walking towards you with his
11 hands out like he wants to give you a hug; is that what
12 you're saying?

13 A No, I -- he started walking towards me and
14 then lunged at me.

15 Q Okay. So when he's first walking towards you,
16 does he have his hands extended?

17 A No. He walks towards me and then lunges at
18 me.

19 Q And when you say, "lunge," by that do you mean
20 that's the point at which he extended his arms?

21 A Yes. The action, yes.

22 Q Other than -- I'm sorry?

23 A The action of lunging, yes.

24 Q Other than extending his arms, is there
25 anything else he did that leads you to characterize his

1 actions as a lunge?

2 A No, I do not believe so.

3 Q Okay. And when he extended his arms, it
4 appeared to you as though he wanted to give you a hug;
5 is that correct?

6 A Well, he was leaning towards my direction.
7 And I have reason to believe that he was going to use
8 force against me.

9 Q And upon what did you base your conclusion
10 that he was going to use force against you?

11 A That he was lunging at me.

12 Q Okay. Instead of using the word lunge, I'd
13 like you to just describe for me physically -- you've
14 already said he's walking towards you. His pace doesn't
15 change.

16 A Mm-hmm.

17 Q He's got his arms towards you in a manner that
18 you previously characterized as asking for a hug. Tell
19 me what else, if anything, he did that led you to
20 believe he was trying to physically attack you.

21 A He was just walking fast towards me and leaned
22 into my direction.

23 Q Okay. What happened next?

24 A I used body holds to take him to the ground.

25 Q Describe the body holds.

1 A It was a -- I guess, more of a hip toss I used
2 to take him to the ground.

3 Q What's a hip toss?

4 A It's when you take his momentum. That him
5 coming at me, and I kind of use it against him, and I --
6 I go over my one right hip or left hip, depending on how
7 you do it, and take him to the floor.

8 Q Well, how did you do it on this particular
9 occasion?

10 A Without looking at the -- I don't recall which
11 way it was.

12 Q All right. You were about to say without
13 looking at the -- what --

14 A The paperwork. I think I have it in there.

15 Q Okay. Now this hip toss, had you ever
16 previously used that type of maneuver?

17 A In my lifetime?

18 Q Yes.

19 A Yes.

20 Q Is it something that you had been trained on?

21 A Within the department? I --

22 Q Anywhere?

23 A I wrestled, so --

24 Q Okay. So is this kind of a standard wrestling
25 move that you had learned?

1 A Yes.

2 Q And is it called a hip toss?

3 A Yep.

4 Q Okay. And describe for me the mechanics of
5 the hip toss, what you did with your arms, what you did
6 with your legs and so forth.

7 A I mean, I grab him by the upper torso area,
8 and lean my hip into him, and use my upper body to --
9 again, use his momentum against mine and take him to the
10 ground.

11 Q And did you, in fact, take him to the ground?

12 A I did.

13 Q Did he make contact with the ground?

14 A He did.

15 Q What part of his body made contact with the
16 ground?

17 A I -- I don't recall.

18 Q Well, in the normal hip toss that you would
19 use at wrestling, is there a usual position that the
20 individual would end up on the ground?

21 A No.

22 Q Okay. So you don't know if he landed face up,
23 face down, on his side, something else?

24 A Oh. No, it can really go any way. It can go
25 any which way.

1 Q Okay. Putting aside how it can go, do you
2 know whether he landed face up, face down, on his side,
3 or something else?

4 A I know he landed face down.

5 Q Okay. So you observed him actually make
6 contact face down; is that correct?

7 A I -- yes.

8 Q Okay. And what parts of his body did you
9 observe making contact with the ground when you brought
10 him to the ground?

11 MR. DORANDO: Objection. You can answer.

12 THE WITNESS: I don't recall.

13 BY MR. SIVIN:

14 Q Okay. Now what happened to your body when you
15 brought him down?

16 A I -- well, I -- I suffered an eye contusion
17 from the incident.

18 Q And which eye?

19 A I don't recall.

20 Q Okay. How did you suffer that eye contusion?

21 A Somewhere in the midst of taking -- taking him
22 down.

23 Q Well, do you recall your face making contact
24 with anything that resulted in that eye contusion?

25 A I didn't, but obviously it did at some point.

1 Q Okay. But generally, what happened with your
2 entire body as --

3 A I landed --

4 Q -- brought him down to the ground?

5 A I landed on top of him.

6 Q Okay. Now did your front land on top of his
7 back, or was there some other type of contact?

8 A My side may have landed on his side. Just --
9 it's -- when you do a hip toss, you typically land side
10 to side. It's kind of how you'd --

11 Q But do you have any recollection of what part
12 of your body made contact with what part of his body?

13 A No, I don't.

14 Q Now sitting here today, are you aware of the
15 fact that after this incident, he was diagnosed with
16 four broken ribs?

17 A Yes, I found that out.

18 Q Okay. Do you believe those ribs got broken by
19 you bringing him down to the ground?

20 A I would assume so, yes.

21 Q Okay. And describe for me the mechanism by
22 which you believe his four ribs got broken by you just
23 doing a hip toss.

24 A From my body weight landing on his -- on his
25 side.

1 Q So you recall your body weight landing on his
2 side?

3 A Yes.

4 Q And which side did it land on?

5 A Again, I don't -- I don't recall --

6 Q What portion of --

7 A -- exactly how --

8 Q -- your body landed on his side?

9 A Without -- I don't recall which side. And I
10 don't exactly have a proximity of whether it was here --
11 or upper torso, lower torso.

12 Q Did your knee land in his ribs at all?

13 A No.

14 Q Did any portion of your body make blunt force
15 contact with his ribs?

16 A No.

17 MR. DORANDO: Object -- objection, but
18 the answer stays.

19 THE WITNESS: No.

20 BY MR. SIVIN:

21 Q For how long a period of time had you been a
22 wrestler?

23 A High school.

24 Q Varsity?

25 A Yep. Yes, sir.

1 Q And can you estimate how many hip tosses
2 you've executed during the course of your entire
3 wrestling career?

4 MR. DORANDO: Objection. You can answer.

5 THE WITNESS: I don't recall.

6 BY MR. SIVIN:

7 Q Would you say it's been at least 100?

8 A A hundred?

9 Q Yeah, in all the matches, and practices, and
10 scrimmages you've had.

11 A I guess, your four year, yes, you could say
12 that.

13 Q Okay. And during any of those hip tosses, did
14 any of the individuals who you tossed end up with broken
15 ribs?

16 A I don't recall.

17 Q So why do you believe that your hip toss was
18 the mechanism that resulted in those four broken ribs?

19 A Because I was -- I had a use of force on the
20 inmate.

21 Q But what about that particular use of force
22 makes you believe that that caused his four broken ribs,
23 as opposed to some other use of force that may have
24 happened after your encounter with him?

25 A Because I landed on his rib area.

1 Q Okay. So you recall now that you landed on
2 his rib area?

3 A Well, his -- yes, his side, where his ribs are
4 located, yes.

5 Q Okay. Now at some point after it was
6 determined that he had four broken ribs, you were
7 interviewed by OSI, correct?

8 A Correct.

9 Q And before being interviewed by OSI, did you
10 ever tell anybody that you landed on his ribs?

11 MR. DORANDO: Objection. You can answer
12 if you recall.

13 THE WITNESS: I may have told my
14 supervisor in the -- my To From, but I don't recall if
15 that was actually a -- or if that's something I just
16 disclosed to the internal investigation. I don't --
17 BY MR. SIVIN:

18 Q Okay. So what happened after you brought Mr.
19 McCallion to the ground?

20 A I activated my PAS system.

21 Q How did you do that?

22 A I reached my radio, and there's a button I can
23 push, and I pushed it.

24 Q And what happens when you push that button?

25 A It sends an alarm to the arsenal. And then

1 the arsenal relays to the response team within the
2 facility that there is a red dot, or an emergency, on a
3 particular location -- or at a particular location.

4 Q Did you speak at all during this red dot? Did
5 you communicate anything to anyone?

6 A To another officer?

7 Q No, no. When you activated the red dot, that
8 alerts someone in the arsenal, correct?

9 A Right.

10 Q Did you also say anything over a radio?

11 A No, I don't have to.

12 Q Does the arsenal officer know where the red
13 dot is coming from?

14 A Yes, they know exactly that it was C1 dorm.

15 Q Okay. So tell me what -- tell me the physical
16 interaction between you and Mr. McCallion after you
17 brought him down to the ground.

18 A He continued to struggle. He kind of was
19 flailing his arms, so I tried to get him under control
20 and keep him -- keep him secured to the floor until help
21 arrived.

22 Q And when you say he continued to struggle,
23 describe the actions that you characterize as a
24 struggle.

25 A Just flailing his arms around, behind, trying

1 to grab. Just -- he was struggling to get out of the
2 situation he was in.

3 Q Was he still face down at that point?

4 A He was.

5 Q And you're still on him at that point?

6 A Yes.

7 Q Was he eventually placed in handcuffs?

8 A He was.

9 Q Were those your handcuffs?

10 A No.

11 Q Who placed him in handcuffs?

12 A I did.

13 Q Okay. How did you get the handcuffs?

14 A An officer responding saw that I was on top of

15 Inmate McCallion, and I got his arms behind his back,

16 and that's when I applied the mechanical restraints.

17 Q Okay. How much time elapsed between the
18 moment you brought him to the ground and the time you
19 put on the cuffs?

20 A I don't recall an exact time frame.

21 Q Give me a ballpark.

22 A Twenty seconds -- 15 seconds, maybe.

23 Q And during those 15 -- approximate 15 to 20
24 seconds, were you still on top of him?

25 A Yes, I was continuing to struggle with him,

1 yes.

2 Q Okay. And by struggling, you mean trying to
3 get his arms behind his back?

4 A Yes.

5 Q Was he saying anything during this time?

6 A He's continuing to scream.

7 Q Any words that you recall?

8 A No. Not (indiscernible - simultaneous speech).

9 40:09

10 Q Was the screaming -- was the screaming the
11 same as you heard before, the aah?

12 A Yes.

13 Q Any different?

14 A The same high-pitch screaming distress, no.

15 Q Okay. And who were the officers who
16 responded?

17 A I can tell you Officer Hart was the one that
18 handed me the mechanical restraints.

19 Q Would that be Marcus Hart?

20 A I believe that's his first name.

21 Q Anyone else respond?

22 A Yes, more people did.

23 Q Okay. Can you identify any of them?

24 A No, not -- I knew my --

25 Q Did (indiscernible -- simultaneous speech.)

1 41:03

2 A I knew my supervisor responded.

3 Q Who is your supervisor?

4 A Joe Coffey.

5 Q C-O-F-F-E-Y, correct?

6 A I believe so, yes.

7 Q Did Officer Barbarito respond?

8 A Based on looking at the reports, yes.

9 Q How about Officer Griffith?

10 A I don't recall.

11 Q Okay. Can you identify any other officers who
12 responded?

13 A No.

14 Q Did anyone use force against Mr. McCallion in
15 the bathroom other than you?

16 MR. DORANDO: Object to form. Go ahead.

17 THE WITNESS: No.

18 BY MR. SIVIN:

19 Q So after you got him in handcuffs, did he stop
20 struggling?

21 A He did.

22 Q What happened then?

23 A We stood him up, and he was escorted out of C1
24 dorm.

25 Q Now did you say, "we stood him up"?

1 A Me and someone else did, yes.

2 Q Do you know who that someone else is?

3 A I don't.

4 Q And how did you physically stand him up?

5 A I honestly -- I don't recall. We -- it was a
6 struggle. I remember that.

7 Q So he struggled while you were standing him
8 up?

9 A In the sense that he was on an intoxicant, I
10 don't think -- it wasn't a struggle, like, he was -- I
11 think he just didn't have balance at that point. I
12 don't --

13 Q Well, do you recall him not having balance at
14 that point?

15 A I don't remember. I just know he was heavy to
16 pick up.

17 Q Do you recall any of his movements while you
18 were picking him up?

19 A No.

20 Q Was he complaining of any pain at that point?

21 A No.

22 Q Did he appear to be in any pain at that point?

23 A I don't believe so.

24 Q Did he have any bruises on him at that point?

25 A Not that I recall. Not that I can recall.

1 Q Did you see any blood?

2 A There may have been from, you know, the
3 concrete floor. I don't know -- when he hit the floor,
4 I don't know, there may have been blood.

5 Q Well, putting aside that there may have been,
6 did you see any blood?

7 A I don't recall.

8 Q Did you see any scrapes on him?

9 A I don't recall.

10 Q Okay. And what happened after you got him up
11 off the floor?

12 A I was immediately looked -- someone else took
13 Inmate McCallion and started to escort them, and I was
14 looked at for my eye.

15 Q Well, what did you physically do after Mr.
16 McCallion was raised off the floor by you and the other
17 officer?

18 A I handed him off to another officer.

19 Q Was that Officer Hart?

20 A I don't recall who it was.

21 Q When you say you handed him off, what do you
22 mean by that?

23 A You typically grab them by their -- their
24 handcuffs and -- for security reasons.

25 Q Now was Mr. McCallion still screaming at this

1 point?

2 A I -- I don't recall.

3 Q Well, when's the last point at which you
4 recall him screaming?

5 A I -- I don't recall if he screamed afterwards
6 or -- this was three years ago, so I can't -- I can't
7 exactly tell you when exactly the screaming stopped.

8 Q Was he screaming when any of the other
9 officers responded to the bathroom?

10 A I don't recall.

11 Q Okay. So after you handed him off to another
12 officer, what did you do?

13 A I was taken aside and looked at for my
14 injuries.

15 Q By whom were you taken aside?

16 A Probably my supervisor at the time.

17 Q Well, do you recall someone taking you aside,
18 or do you just know this to be general procedure?

19 A I just know that my interaction with him was
20 done and I was -- someone was looking at my eye.

21 Q Did you -- was he escorted out of the bathroom
22 at that point by the officer to whom you handed him off?

23 A I assume so.

24 Q Now when the officers arrived, did you tell
25 them what had happened?

1 A No, that's -- after the situation, I'm away
2 from McCallion, and it's just me, then that's when I
3 can, you know, tell my supervisor what happened.

4 Q Well, the officers who arrived, did any of
5 them ask you what's going on? Why is he on the floor?

6 A I probably said that he was under the
7 influence, or I believed he was under the influence of
8 an intoxicant.

9 Q Did you tell any of the officers that
10 McCallion lunged at you?

11 A No.

12 Q Why not?

13 A Because I don't have to explain to other
14 officers why I used force.

15 Q Well, why would you have to explain to them
16 that he's under an intoxicant?

17 A So they know for their safety.

18 Q Well, wouldn't it be important for them to
19 know that he just tried to attack an officer?

20 MR. DORANDO: Objection. Go ahead.

21 THE WITNESS: I guess that would be
22 assumed that that's what happened.

23 BY MR. SIVIN:

24 Q So is it your testimony that you didn't tell
25 any of the officers that Mr. McCallion lunged at you?

1 A When the initial officers responded, I don't
2 know if I did or didn't. I told my supervisor that, and
3 that's the only person I have to report to.

4 Q Okay. Did you observe any change in Mr.
5 McCallion's physical condition between the time that you
6 first entered the bathroom and the point when you last
7 saw him?

8 A I don't recall if it -- if it changed or not.

9 Q Okay.

10 A It happened so quick that -- and my adrenaline
11 is rushing. It's kind of a chaotic scene, so I don't
12 remember.

13 Q Well, had you ever used force against an
14 incarcerated individual prior to that day?

15 A I don't -- I don't believe so.

16 Q Had you ever been accused of using excessive
17 force against an individual prior to that day?

18 A No.

19 Q Had an incarcerated individual ever filed a
20 grievance against you in connection with the use of
21 force?

22 MR. DORANDO: Objection. You --

23 THE WITNESS: I don't believe so.

24 BY MR. SIVIN:

25 Q Where did you go from the bathroom after you

1 handed off Mr. McCallion?

2 A I -- I went back to my desk, grabbed a few
3 things, then I was taken to the infirmary.

4 Q And your desk was in the dorm?

5 A Yes, back in the -- yes, it was a different
6 room.

7 Q Okay. And who took you to the infirmary?

8 A I believe my supervisor escorted me.

9 Q Would that be Sergeant Coffey?

10 A Yes.

11 Q At that point, when he took you to the
12 infirmary, did he ask you what had happened?

13 A Most likely, yes.

14 Q Well, do you have a recollection of that?

15 A No, I don't.

16 Q Okay.

17 A I don't know exactly when I told them what
18 happened, whether it was in the infirmary, on the dorm.

19 Q Now were you bleeding at that point?

20 A I had -- I don't know if it was just a bruise,
21 or a black eye, or bleeding. I don't -- without -- I
22 know photos were taken, but I don't recall if I was
23 bleeding or not.

24 Q Okay. Other than the bruise or black eye,
25 did you suffer any other injuries as a result of this

1 incident?

2 A No.

3 Q And did you go directly from the dorm to the
4 infirmary?

5 A Yes.

6 Q Now is this the same infirmary to which an
7 incarcerated individual would be taken?

8 A Yes, but I would imagine he'd be in a
9 different room or --

10 Q Okay. And describe the route that one takes
11 to get from that C1 dorm to the infirmary.

12 A It's --

13 MR. DORANDO: I'll object to the form.
14 Go ahead.

15 THE WITNESS: You walk out the front
16 door. You take a right, and walk a few hundred yards.

17 BY MR. SIVIN:

18 Q Is that a hallway?

19 A No, it's outside.

20 Q Okay. So -- well, when you exit the bathroom,
21 you're in the dorm area, right?

22 A Yes, and more -- when I exit the bathroom,
23 I'm in more of the rec area on the dorm.

24 Q And then describe how you get from that rec
25 area to outside the dorm.

1 A You walk approximately -- I don't know, 20
2 feet or so to the front door.

3 Q And then you exit that front door and just
4 walk a straight path to the infirmary?

5 A No. You go out the front door, like I said,
6 and you take a right.

7 Q And then you'd walk -- is it a sidewalk, or
8 something else, or what?

9 A It's -- I would take, like, a sidewalk,
10 probably or -- I mean, I don't know exactly how.
11 There's a main road, if you -- if you will, down the
12 main the -- between all the dorms, and then there's a
13 sidewalk. I don't know exactly which one I took.

14 Q But in any event, it would just be a straight
15 walk to the infirmary; is that correct?

16 A Yes.

17 Q And then the infirmary, would that be directly
18 ahead of you on the right, the left, or something else?

19 A Once you take that initial right, it would,
20 for the most part, be directly ahead of you.

21 Q Okay. And then there's an entrance to the
22 infirmary, correct?

23 A There is.

24 Q Now were there any video or surveillance
25 cameras inside the C1 dorm?

1 A No.

2 Q Or in the bathroom area?

3 A No.

4 Q How about just outside the dorm?

5 A I don't believe there is. I'm not sure where
6 exactly the facility cameras are.

7 Q Okay. Did you have any type of body-worn
8 camera?

9 A I did not.

10 Q Okay. Now, typically, when an incarcerated
11 individual is brought to an infirmary after use of force
12 incident, is that escort videotaped?

13 MR. DORANDO: Objection.

14 THE WITNESS: I'm -- I don't think so.

15 BY MR. SIVIN:

16 Q Well, have you ever been an escort officer?

17 A No, I'm a -- at the time, I was just a dorm
18 officer.

19 Q Have you -- had you ever observed incarcerated
20 individuals being escorted to an infirmary after a use
21 of force incident?

22 A Yes.

23 Q And have you ever seen any hand-held cameras
24 being used to record that escort?

25 A No.

1 Q Okay. All right. So who exited the bathroom
2 first, you or Mr. McCallion?

3 A I believe he did. I'm not positive.

4 Q Well, why did you remain in the bathroom?

5 A Just because they're looking -- I believe they
6 were looking at my eye to see, you know, my injuries.

7 Q And who was looking at your eye?

8 A Again, I don't recall.

9 Q Was any medical staff looking your eye at that
10 point?

11 A I don't believe so, no.

12 Q Okay. Did you see Mr. McCallion being
13 escorted outside -- out of the bathroom?

14 A No. Once I handed him off to another officer
15 to be escorted, that was the last time I saw him.

16 Q Did you ever again see Mr. McCallion?

17 A I did not.

18 Q Now when you went to the infirmary, did you go
19 by yourself or with some other officer or supervisor?

20 A I believe someone was with me. I can't tell
21 you if it was an officer or supervisor who was escorted
22 -- or who was walking alongside me.

23 Q What happened when you got to the infirmary?

24 A I believe I was taken into one of the nurses
25 offices.

1 Q Now is it your understanding that Mr.
2 McCallion would have been taken to the infirmary as
3 well?

4 A Yes.

5 Q Okay. Did you see Mr. McCallion in the
6 infirmary?

7 A I did not.

8 Q Okay. Can you describe the infirmary? What
9 does it look like, how many different rooms are there,
10 and so forth?

11 A I really can't give you an accurate -- there's
12 -- an accurate description of the infirmary?

13 Q Well, as best as you can.

14 A You walk in, and you can take a hallway, I
15 guess, straightforward from the entrance. And to the
16 left, that's where I believe the nurses stations are.

17 Q Other than nurses stations on the left, what
18 else is in the infirmary?

19 A I honestly -- I'm not someone that's down
20 there regularly, so I can't tell you everything that's
21 in there.

22 Q And what are the nurses stations?

23 A What are they?

24 Q What are they?

25 A I --

1 Q Describe it.

2 A A room with desks.

3 Q And are people examined in the nurses
4 stations?

5 A I would believe -- yeah, I -- yes.

6 Q Okay. Well, were you examined in one of these
7 nurses stations?

8 A Yes.

9 Q Okay. Now you mentioned there on the left.
10 Is there anything on the right?

11 A More doctors -- there's doctors' offices, I
12 think. I believe dental, and a few more offices.

13 Q Okay. Is there any type of a strip room, or a
14 frisk room, at or around the infirmary?

15 A I don't -- they have a screen in one of the
16 nurses stations that I believe they use.

17 Q So you're indicating that if an inmate needed
18 to be frisked or stripped at the infirmary, it would
19 take place in one of the nurses stations?

20 A I honestly don't know the protocol. I believe
21 that is it, but --

22 Q And can you describe this nurses station where
23 you believe these frisks might take place?

24 A Again, it's a room. It might have -- I think
25 it has a hospital bed. Medical --

1 Q Does the room have a door?

2 A Yes.

3 Q Okay. If the door is closed, can you see into
4 the room?

5 A Yes. It has a -- I believe a glass panel of
6 some sort.

7 MR. DORANDO: Ed, can we take a moment
8 off the record?

9 MR. SIVIN: Sure.

10 THE REPORTER: Okay. We are going off
11 the record at 12:02 p.m. Eastern Standard Time.
12 (Off the record)

13 THE REPORTER: Okay. We are back on the
14 record at 12:10 p.m. Eastern Standard Time.

15 You may continue.

16 MR. SIVIN: Okay.

17 BY MR. SIVIN:

18 Q So, Officer, when you got to the infirmary,
19 did you go into one of those nurses stations to be
20 examined?

21 A Yes.

22 Q And when you went in that nurses station, did
23 a nurse, in fact, examine you?

24 A She looked at my eye, yes.

25 Q Was there anyone else in the room with you

1 besides the nurse?

2 A I don't recall.

3 Q Was the door open or closed when she was
4 examining you?

5 A I don't recall.

6 Q Do you -- which nurse station were you in?
7 Like, the first, second, third, fourth?

8 A I don't recall.

9 Q Okay. Now on the way to the infirmary, did
10 you tell the person you were with what had happened,
11 that Mr. McCallion lunged at you?

12 A I don't recall if I did or not.

13 Q Okay. Well, when you got to the infirmary,
14 the nurse asked you what happened, right?

15 A They may have. I -- they were more focused on
16 my eye than figuring out what happened.

17 Q When you got to the infirmary, did you tell
18 anyone what happened?

19 A The only person I remember telling was my
20 supervisor at the time, definitively.

21 Q And that would have been Sergeant Coffey?

22 A Correct.

23 Q Okay. And when, for the first time, did you
24 believe you told Sergeant Coffey?

25 A I don't -- I don't recall exactly when I told

1 him.

2 Q Well, was it before you got to the infirmary?

3 A It may have -- it may have, yes.

4 Q And how long were you in the infirmary?

5 A I don't recall exactly.

6 Q Give me your best estimate.

7 MR. DORANDO: Objection. You can answer.

8 THE WITNESS: I don't recall.

9 BY MR. SIVIN:

10 Q Was it more than an hour or less than an hour?

11 A Less than an hour.

12 Q Okay. Was it more than a half hour or less
13 than a half hour?

14 A I don't know. I don't -- I don't recall.

15 Q Did you see Mr. McCallion in the infirmary?

16 A No.

17 Q Do you know whether or not he was in the
18 infirmary when you were in the infirmary?

19 A I believe he was in the infirmary about the
20 same time.

21 Q Okay. And what makes you believe that?

22 A Because that's where they would have taken him
23 from the dorm.

24 Q Okay. Well, did you overhear Mr. McCallion at
25 any point in the infirmary?

1 A I did not.

2 Q Were there other officers in the infirmary
3 when you were there?

4 A I don't recall.

5 Q Can you describe Sergeant Coffey? What did he
6 look like back then?

7 A I don't have his -- a male, taller than me.

8 Q Caucasian?

9 A Yes.

10 Q Can you give me his approximate height and
11 weight?

12 A I -- Five-nine, five-ten. I don't know
13 exactly.

14 Q How would you characterize his build?

15 A Broad.

16 Q Okay. Now have you ever socialized with
17 Sergeant Coffey?

18 A No.

19 Q Okay. How about Officer Hart? Have you ever
20 socialized with him?

21 A No.

22 Q How about Officer Barbarito?

23 A No.

24 Q How about Officer Griffith?

25 A No.

1 Q And by that, I mean, have you ever, you know,
2 been to a bar, a restaurant, an event outside of the
3 correctional facility with any of these individuals?

4 A No.

5 Q To your knowledge, had Officer Hart been on
6 the job longer than you, about the same time as you, or
7 less than you?

8 A I don't know.

9 Q How about Barbarito?

10 A I don't know.

11 Q How about Griffith?

12 A I believe I have more time than him.

13 Q Okay. What did you do after the infirmary?

14 A I had to start my -- filing my reports.

15 Q Use of force reports?

16 A Yes.

17 Q Have you ever spoken to Sergeant Coffey about
18 Mr. McCallion between the date of the incident and
19 today?

20 A Just about these -- these meetings, no.

21 Q When you say, "these meetings," you mean
22 scheduling the depositions?

23 A Yes.

24 Q How about with Officer Hart? Have you had any
25 conversations with him about Mr. McCallion between the

1 date of the incident and today?

2 A No. Other than the dep -- scheduling of the
3 deposition, no.

4 Q And would that be the same with Barbarito?

5 A Yes.

6 Q And how about Griffith? Same answer?

7 A Yes.

8 Q Now sitting here today, are you aware that Mr.
9 McCallion claims that he was assaulted by officers in
10 the strip room? You're aware that he's making that
11 claim?

12 A I am aware.

13 Q Okay. And have you ever asked Officer Hart,
14 or Officer Barbarito, or Officer Griffith about those
15 accusations?

16 A No.

17 Q How about Sergeant Coffey?

18 A No.

19 Q Now do you know one way or the other whether
20 Coffey was in the infirmary when McCallion was in the
21 infirmary?

22 A Can you repeat the question?

23 Q Do you know whether Sergeant Coffey was in the
24 infirmary when McCallion was in the infirmary?

25 A He may have been in the vicinity.

1 Q Do you know one way or the other whether he
2 was inside the infirmary when McCallion was in the
3 infirmary?

4 A Definitively, no, I can't tell you.

5 Q Do you know whether Coffey was in the
6 infirmary when you were in the infirmary?

7 A When I was getting checked by medical staff,
8 no, I can't definitively say.

9 Q How about Hart? Do you know if he was in the
10 infirmary when you were in the infirmary?

11 A I can't say.

12 Q How about Barbarito?

13 A I don't recall for any of them.

14 Q How about -- so the same answer with Griffith?

15 A Yes.

16 Q Can you identify any officers or supervisors
17 who were in the infirmary when you were in the
18 infirmary?

19 A No.

20 Q Did you know an incarcerated individual named
21 Miguel Sliger, S-L-I-G-E-R?

22 A I do not know.

23 Q Other than being looked at -- your eye being
24 looked at in the infirmary, did you receive any other
25 evaluation or treatment of any injuries that you claim

1 you sustained in this incident?

2 A Other than just asking if I had any other
3 injuries that I was aware of.

4 Q And who asked you that?

5 A I believe the nurse.

6 Q This was that day in the infirmary?

7 A Yes, during the evaluation.

8 Q And did you claim that you had any other
9 injuries?

10 A No.

11 Q Did you take any time off from work as a
12 result of this incident?

13 A No.

14 Q Before October 28th, 2020, had you ever known
15 of any incarcerated individuals to use K2 at Gouverneur?

16 MR. DORANDO: Objection. You can answer.

17 THE WITNESS: I -- specifically, K2, I
18 knew inmates were under the -- were under -- could be
19 under the influence of intoxicants.

20 Q Did that include K2?

21 A K2 is one of them, yes.

22 Q Had you ever observed any adverse reactions by
23 any inmates who would use K2?

24 MR. DORANDO: Objection. You can answer.

25 THE WITNESS: Yes.

1 BY MR. SIVIN:

2 Q And describe what you recall in that respect.

3 A Pertaining to McCallion or other -- you want
4 other?

5 Q Others, yeah.

6 A Same kind of behavior -- erratic behavior.

7 Q Screaming?

8 A Yes.

9 Q Pacing?

10 A Yes.

11 Q Sweating?

12 A Sweating, yes.

13 Q Okay. So would you say that what you observed
14 with respect to Mr. McCallion that day was the same that
15 you had observed with other incarcerated individuals who
16 had been under the influence of K2?

17 MR. DORANDO: Objection. Go ahead.

18 THE WITNESS: It could be, but I'm not a
19 medical -- so I -- my first thing is to make sure the
20 inmate is okay and to make sure -- look out for their
21 safety.

22 Q Did you testify at a tier hearing in
23 connection with this incident?

24 A I don't recall.

25 Q Did you testify at an OSI hearing, what's

1 known as, like, a Q and A?

2 A Yes.

3 Q Okay. And have you -- have you had an
4 opportunity to review your testimony in that regard?

5 A The -- I believe so. The OSI report?

6 Q No, no. Your testimony at OSI?

7 A Like, the recording?

8 Q Yes.

9 A No.

10 Q How about a transcript of the testimony?

11 A I believe I've seen a summary of the
12 transcript -- or the trans -- summary, I guess, of it.

13 Q Well, have you seen an actual transcript?
14 Question, answer where you're sitting --

15 A No.

16 Q Okay. Did you have a partner during that
17 tour?

18 A No, it's just me on the dorm.

19 Q Okay. No other officers assigned to the dorm
20 during your shift?

21 A No.

22 Q When you were working, did you have a name
23 tag?

24 A I did.

25 Q Were you required to wear a name tag?

1 A As part of our uniform, yes.

2 Q And what exactly does the name tag say?

3 A My -- M. Marra.

4 Q Okay. And were all the officers of Gouverneur
5 required to wear name tags while on duty?

6 A As part of their -- yes.

7 Q Do you know Officers Weidner, W-E-I-D-N-E-R,
8 and Jackson?

9 A Yes.

10 Q Have you spoken with them at all about Mr.
11 McCallion?

12 A No.

13 MR. SIVIN: Okay. I'd like to ask the
14 reporter to put up on the screen Plaintiff's Exhibit 1.

15 THE REPORTER: Yes, one moment.

16 Is everyone able to see that?

17 MR. SIVIN: Yeah. There's something in
18 front of it, though, that says "rearranged videos on the
19 stage."

20 THE REPORTER: I believe that's on your
21 end. That you can --

22 MR. SIVIN: Okay. I can see it.

23 (Exhibit 1 marked for identification.)

24 BY MR. SIVIN:

25 Q Can you see that, Officer?

1 A Yes.

2 Q And is that a misbehavior report you filled
3 out in connection with the incident involving Mr.
4 McCallion?

5 A It is.

6 Q Now the report is dated October 28th, 2020.
7 Can you tell me at approximately what time you filled
8 out the report?

9 A I filled out the report? I can't definitively
10 tell you.

11 Q Can you give me some estimate as to when you
12 filled it out? Was it before your shift ended at 11:00,
13 after your shift, the next day?

14 A I don't rec all.

15 Q Did you fill it out that day or the following
16 day?

17 A It was that night.

18 Q Okay.

19 MR. SIVIN: All right. Let's go to
20 Plaintiff's Exhibit 2, please.

21 (Exhibit 2 marked for identification.)

22 BY MR. SIVIN:

23 Q And by the way, Officer, you had a chance to
24 review your -- Plaintiff's Exhibit 1, the misbehavior
25 report, in preparation for your deposition today; is

1 that correct?

2 A I did.

3 Q Okay. Plaintiff's Exhibit 2 is a two-page
4 report. It's the use of force report. Is that the use
5 of force report that you filled out in connection with
6 this incident?

7 A Yes.

8 Q Okay. And do you recall what time you filled
9 out that report?

10 A I don't.

11 MR. SIVIN: All right. Let's go to
12 Plaintiff's Exhibit 3.

13 (Exhibit 3 marked for identification.)

14 BY MR. SIVIN:

15 Q Okay. Now this is a To From memorandum, but
16 the names have been redacted, so I can't tell. Is this
17 your handwriting?

18 A It is not.

19 Q Okay. So you had a chance to review this
20 document as well in preparation for your deposition,
21 correct?

22 A Yes.

23 Q So you're saying the officer who generated
24 this memorandum, that's someone other than you?

25 A Yes.

1 Q Okay. So you did not accompany Mr. McCallion
2 to the hospital; is that correct?

3 A No, I did not.

4 Q Okay. Do you know who this officer is?

5 A I -- no, I don't know who that is.

6 Q Well, did you know another officer on duty at
7 approximately 11:00 p.m. with the first initial M for
8 his last name?

9 A M? No, I don't recall.

10 Q Okay.

11 MR. SIVIN: All right. Let's go to
12 Plaintiff's Exhibit 4.

13 (Exhibit 4 marked for identification.)

14 MR. DORANDO: Just for the record, I've
15 printed out copies of these. And so if he looks over my
16 direction, I just have --

17 MR. SIVIN: Yeah.

18 MR. DORANDO: -- a copy of it in front of
19 us.

20 MR. SIVIN: Yeah, that's why I did it.
21 I think it's easier that way.

22 BY MR. SIVIN:

23 Q All right. Plaintiff's Exhibit 4 is an
24 employee accident injury report. You had a chance to
25 review this as well, correct?

1 A I did.

2 Q Is there anything on this report that is in
3 your handwriting?

4 A That is? Yes.

5 Q Okay. And identify for me what's in your
6 handwriting.

7 A All of it, besides where it says, "Use of
8 Force 20-0040," and the statement of the supervisor, and
9 the supervisor's name, and signature, and date, and the
10 bottom --

11 Q Okay. Actually -- well -- so most of it's in
12 your handwriting, correct?

13 A The top half. Most of it is, yes.

14 Q All right. So starting with the top half, if
15 you can identify it with the numbers of the boxes, tell
16 me what's not in your handwriting.

17 A What is not? So in box 12, where it says,
18 "Use of Force Number 20-0040."

19 Q Okay. Continue. What else is not in your
20 handwriting going down in the report?

21 A Where -- line 16, where it says, "I agree with
22 what was reported to me."

23 Q That's not in your handwriting, correct?

24 A No.

25 Q Am I correct?

1 A Yes.

2 Q Okay. Continue down.

3 A Line 17.

4 Q All right. That's all in someone else's
5 handwriting, correct?

6 A Correct.

7 Q And then the -- from 21 down, is that all in
8 somebody else's handwriting?

9 A Yes.

10 Q Okay.

11 MR. SIVIN: Let's go to Plaintiff's
12 Exhibit 5, which is a series of photographs.

13 (Exhibit 5 marked for identification.)

14 MR. DORANDO: You may want to look at the
15 screen for this one just

16 THE WITNESS: Okay.

17 MR. DORANDO: -- because those are --
18 those will be in color. These are in black and white.

19 THE WITNESS: Okay.

20 BY MR. SIVIN:

21 Q All right. Now the second page of those
22 photographs, you see there's three photographs of an
23 individual on that page. Do you see that?

24 MR. DORANDO: Can you put up --

25 MR. SIVIN: Can you go to the second

1 page?

2 MR. DORANDO: -- page 2 on the screen?

3 BY MR. SIVIN:

4 Q Okay. And do you have the hard copies in
5 front of you as well, Officer?

6 A Yes, they're just black -- they're black and
7 white.

8 Q Oh, okay. So looking at the color copies that
9 have been marked as Plaintiff's Exhibit 5, the bottom
10 right photograph, do you see that one?

11 A Yes.

12 Q And do you see those red areas on Mr.
13 McCallion's back?

14 A Yes.

15 Q Do you know how those red areas got to be
16 there?

17 A I don't know.

18 Q Okay. Well, is there anything about your
19 interaction with Mr. McCallion that you believe would --
20 resulted in those red areas on his back?

21 MR. DORANDO: I'm going to object. Go
22 ahead.

23 THE WITNESS: I don't know.

24 BY MR. SIVIN:

25 Q Okay. And let's go to the third page. And do

1 you see the photograph of Mr. McCallion's neck with --
2 the red mark -- red marks on his neck?

3 A Yes.

4 Q Do you know how he got those red marks?

5 A I do not.

6 Q Was there any physical contact between you and
7 Mr. McCallion, or Mr. McCallion and the floor that you
8 feel would have resulted in those red marks?

9 MR. DORANDO: Objection. You can answer.

10 THE WITNESS: There could have been, but I don't -- I
11 don't know.

12 BY MR. SIVIN:

13 Q Okay. In other words, you -- do you recall
14 anything that, in your opinion, would have resulted in
15 those red marks?

16 MR. DORANDO: Objection. Go ahead.

17 THE WITNESS: No.

18 BY MR. SIVIN:

19 Q Okay. And -- then there's a picture of Mr.
20 McCallion's back with red marks at various areas.
21 Again, looking at that photograph, can you account for
22 how those areas got reddened?

23 A That could have been from the struggle on the
24 -- on the floor.

25 Q Well, during the struggle, did you ever strike

1 him in the back?

2 A No.

3 Q Did you ever knee him in the back?

4 A No.

5 Q Did you see his back make physical contact
6 with anything during the struggle?

7 A Not that I can recall.

8 Q Okay.

9 MR. SIVIN: All right. Let's go to
10 Plaintiffs Exhibit 6.

11 (Exhibit 6 marked for identification.)

12 BY MR. SIVIN:

13 Q And you reviewed this document as well in
14 preparation for your testimony today?

15 A Yes.

16 Q Okay. Now this purports to be a summary of an
17 interview that was conducted of you by Investigator
18 Graziano; is that correct?

19 A Yes.

20 Q And does that summary accurately reflect what
21 you told Investigator Graziano?

22 A I believe so.

23 Q Okay. Now when for the first time did you
24 know that Mr. McCallion was diagnosed with four
25 fractured ribs?

1 MR. DORANDO: Objection.

2 THE WITNESS: I don't recall exactly when
3 I -- when I found out.

4 BY MR. SIVIN:

5 Q Was it before or after this interview?

6 A Be -- oh, this? Before.

7 Q Okay. Now was this interview recorded as
8 well? Was there a tape recorder there at the time?

9 A Yes.

10 Q And have you heard a transcript of that
11 recording?

12 A No.

13 Q Do you see somewhere in the middle of this
14 summary it says, quote, He confirmed that he landed on
15 the inmate's left side as both went to the floor, end
16 quote. Do you see that?

17 A I do.

18 Q Okay. And did you tell Officer Graziano that
19 you landed on Mr. McCallion's left side?

20 A Yes.

21 Q Before this interview, which took place about
22 three months after the incident, had you ever told
23 anyone that you landed on McCallion's left side?

24 A No.

25 Q Okay.

1 MR. SIVIN: Let's go on to Plaintiff's
2 Exhibit 7.

3 (Exhibit 7 marked for identification.)

4 BY MR. SIVIN:

5 Q Is this logbook entries for C1 dorm during the
6 shift you were working at this time?

7 A It is.

8 Q Now let's go down to the bottom, 10:15. You
9 see that?

10 A Ten -- yes.

11 Q Okay. To the left of that appears to say
12 "LE." Do you know what that refers to?

13 A Late entry.

14 Q And is that in your handwriting, that 10:15
15 entry?

16 A It is not.

17 Q Okay. Do you know who wrote that?

18 A I do not.

19 Q Is anything in this logbook in your
20 handwriting?

21 A Yes.

22 Q Can you tell me what's in your handwriting?

23 A Where do you want me to start?

24 Q Well, let's start at the top.

25 A Okay. So the date -- it says date, tour --

1 Q Yep.

2 A -- beginning, the CO on duty, the sergeant,
3 print --

4 Q So, basically, everything that's filled out
5 next to that preprinted area, it would be in your
6 handwriting?

7 A Other than the end -- the end number next to
8 inmate count, and where it says --

9 Q Okay. And how --

10 A Go ahead.

11 Q And how about the time entries, starting with
12 2:55, going down to 10 p.m.? Were any of those in your
13 handwriting?

14 A Yes, all of them, besides the three -- it
15 might be 3:12.

16 Q What does it say next to that? Oh, yeah.
17 Okay.

18 A It says -- that's my -- I believe my area
19 supervisor's signature.

20 Q Anything else not in your handwriting during
21 these time entries?

22 A Yeah, everything is my handwriting up until
23 9:23.

24 Q Okay.

25 MR. SIVIN: And let's go on to Exhibit 8.

1 (Exhibit 8 marked for identification.)

2 BY MR. SIVIN:

3 Q Is this a notification that you are to respond
4 and give testimony in connection with this incident?

5 A Yes.

6 Q And did you give that testimony?

7 A Yes.

8 Q And was that different than the interview that
9 you gave to Investigator Graziano that was documented in
10 that report of interview that we marked as Plaintiff's
11 Exhibit 6?

12 A I believe it's the same thing.

13 MR. SIVIN: Okay. So, Nick, I would like
14 to just listen to that audio recording before I conclude
15 the deposition.

16 MR. DORANDO: Yeah.

17 MR. SIVIN: Is it uploaded now?

18 MR. DORANDO: They haven't emailed me,
19 but I'll check the cloud to see if they've got it.

20 MR. SIVIN: Okay. All right. Why don't
21 we just go off the record for a couple minutes?

22 THE REPORTER: Okay. We are going off
23 the record at 12:41 p.m. Eastern Standard Time.

24 (Off the record)

25 MR. DORANDO: So I was able to get a hold

1 of the person about 10 minutes ago, and she said that
2 she was uploading it as we were talking, so I've been
3 dialing her back to see what the hold up is.

4 MR. SIVIN: All right. If you want -- if
5 we could -- I mean, I may not have any more questions
6 for him after listening to the audio tape, but I might.

7 MR. DORANDO: Yeah. So -- I'm fine --
8 he's going to be staying here throughout the second
9 guy's deposition no matter what.

10 MR. SIVIN: Okay. So why don't we start
11 with Barbarito?

12 MR. DORANDO: So that was my thought as
13 well, while we go on to the next one, and then if we
14 need to bring him back --

15 MR. SIVIN: Okay.

16 MR. DORANDO: -- and continue, then we'll
17 go from there.

18 MR. SIVIN: That sounds good.

19 MR. DORANDO: All right. Give me five
20 minutes. I'll be right back.

21 MR. SIVIN: Okay.

22 (Proceedings concluded at 12:59 p.m.)

23 (Signature reserved.)

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CERTIFICATE OF REPORTER

I, Kimberly Costanza, hereby certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth;

That the proceedings were recorded by me and
thereafter formatted into a full, true, and correct
transcript of same;

I further certify that I am neither counsel
for nor related to any parties to said action, nor in
any way interested in the outcome thereof.

DATED, this 12th day of April 2023.



Kimberly Costanza, CER-

Certified Electronic Reporter

E R R A T A S H E E T

Witness: Matthew Marra

Case Name: McCallion v. C.O. Matthew Marra, et al.

Deposition Date: Friday, March 24, 2023

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Under penalties of perjury, I declare that I have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

MATTHEW MARRA

Date

Sworn to before me this ____ day of _____, 20__

Notary Public